

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL E. ELLER,
Petitioner

v.

C.A. No. 05-10740-DPW

LUIS SPENCER, SUPERINTENDENT
Respondent.

ORDER ON APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF FEES
AND ORDER TO TREASURER'S OFFICE

Now before the Court is plaintiff's application to proceed without prepayment of fees and affidavit under 28 U.S.C. § 1915:

The application to proceed without prepayment of fees is DENIED without prejudice for the following reason(s):

Petitioner Eller has made an insufficient showing that he is without assets to pay the \$5.00 filing fee because he appears to have in excess of \$100 in his prison account. Petitioner is Ordered to pay the \$5.00 filing fee within forty-two (42) days of the date of this Order, or in the alternative, he shall submit evidence, within that forty-two (42) day period, that he is unable to access the funds in his prison account. Failure to comply with this Order will result in dismissal of this action.

It is FURTHER ORDERED:

To the extent that the Superintendent or the Treasurer's Office at M.C.I. Norfolk requires a Court Order to issue a check to this Court in payment of the \$5.00 filing fee from Petitioner Eller's personal or savings prison account, it is hereby ORDERED:

The Treasurer's Office at M.C.I. Norfolk shall issue a check for \$5.00, in payment of the filing fee in the above captioned matter. The check shall be made payable to the Clerk, U.S. District Court, and shall be sent directly by the Treasurer's Office to this Court. This Order is contingent upon 1) authorization and request by Petitioner Eller for the issuance of the a check in the amount of \$5.00 for the purpose of paying the filing fee; and 2) such funds being available in Petitioner Eller's prison account.

If Petitioner Eller is not allowed access to either his personal and/or savings prison account funds, the Treasurer's Office shall provide this Court with an explanation why such funds are unavailable to the Petitioner.

SO ORDERED.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

Dated: April 19, 2005